

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
[Debtor's Name],
Debtor(s).

Case No. [Case No]
Chapter [Chapter]

[Plaintiff's Name],
Plaintiff(s),

Adversary No. [Adversary No]

vs.

**ORDER SETTING TELEPHONIC CASE
MANAGEMENT CONFERENCE**

[Defendant's Name],
Defendant(s).

This action having been assigned to the undersigned Judge, IT IS HEREBY ORDERED that:

1. **Date and Time of Case Management Conference:** A telephonic case management conference will be held on [CMC Date] at [CMC Time]. Instructions for telephonic appearances are attached and are incorporated as part of this order.
2. **Participants:** This order applies to counsel for all parties and those individuals representing themselves. A party representing himself or herself must comply with the provisions of this order.
3. **Preconference Discussion:** Participants shall confer at least **21** days prior to the case management conference regarding:

1 A. Those topics identified in FED R. CIV. P. 26(f), including jurisdiction and venue;
2 whether the initial disclosures required by FED. R. CIV. P. 26 (a)(1) are appropriate in the
3 circumstances of the action; the nature and basis of the parties' claims and defenses;
4 identification of genuinely controverted issues; anticipated motions; further proceedings,
5 including setting of dates for discovery cut-off, pre-trial and trial; prospects for settlement;
6 and whether the case should be assigned to the Bankruptcy Dispute Resolution Program;
7 and

8 B. Whether the parties are in a position to proceed productively at the case
9 management conference and whether a personal appearance will be made.

10 4. **Continuances:** The case management conference will not be continued without
11 **leave of court.** However, the case management conference may be continued for good cause shown,
12 such as conflict with another court appearance, ongoing settlement discussions or representations by
13 counsel that the case management conference is premature.

14 To request a continuance, a participant should submit, at least **10** days prior to the case
15 management conference:

16 A. A stipulation signed by all parties to the action or a declaration setting forth the
17 reasons a continuance is requested, the positions of all participants with respect to a
18 continuance and proposed time frames for the continued hearing; and

19 B. A proposed order continuing the case management conference which incorporates
20 all other provisions of this order. THE PROPOSED ORDER SHALL CONTAIN THE
21 FOLLOWING LANGUAGE: "EACH PARTY SHALL FILE AND SERVE ON ALL
22 OTHER PARTIES AN UPDATED CASE MANAGEMENT CONFERENCE
23 STATEMENT AT LEAST **7** DAYS BEFORE THE CASE MANAGEMENT
24 CONFERENCE."

25 **If a request for a continuance has not been filed at least 10 days prior to the case**
26 **management conference, the case management conference will go forward.**

27 5. **Appearing Personally:** The court prefers and expects that participants appear by
28

1 telephone. However, parties representing themselves who are not able to arrange an appearance may
2 appear personally. If a party hires counsel shortly before the conference, and the attorney has not
3 requested a continuance, an appearance is still required.

4 Counsel who have an appearance in another court at the same time, or are conducting other
5 business in the courthouse can appear personally. However, counsel should note that the case management
6 conferences will be called in the order set forth on the calendar and counsel must be present when the case
7 is called. Counsel who expect to seek compensation from the estate should also note that the court may
8 not compensate personal appearances.

9 6. **Case Management Conference Statement and Proposed Discovery Plan:** At least 7
10 days prior to the case management conference, all parties shall file, jointly or separately, a CASE
11 MANAGEMENT CONFERENCE STATEMENT AND PROPOSED DISCOVERY PLAN with the
12 court pursuant to FED. R. CIV. P. 16(c) and 26(f). The statement shall not exceed four pages in length,
13 addressing the following:

- 14 A. A statement of the date and time that counsel conferred as required by FED. R.
15 CIV. P. 26 (f) and this order;
- 16 B. A concise statement summarizing each legal theory on which the plaintiff or
17 defendant relies and a brief general statement of the facts which support this theory.
- 18 C. The position of the parties with respect to Bankruptcy Rules 7008 and 7012(b);
- 19 D. A statement of when the FED. R. CIV. P. 26 (a)(1) initial disclosures were made and
20 whether any party objects to such disclosures;
- 21 E. The proposed discovery plan and proposed cut-off dates for discovery, disclosure,
22 and pre-trial motions;
- 23 F. The estimated time for trial and desired trial date; and
- 24 G. Whether alternative dispute resolution is desired by the parties.
- 25 H. A statement by any nongovernmental corporate party to this action identifying all its
26 parent corporations and listing any publicly-held company that owns 10% or more of the
27 party's stock. This statement shall be supplemented within a reasonable time of any change
28

1 in the information.

2 THE CAPTION SHALL CONTAIN THE DATE AND TIME OF THE CASE MANAGEMENT
3 CONFERENCE.

4 7. **Scheduling Order:** At the case management conference, dates will be established, such as
5 for the close of discovery, for a trial setting conference, or for trial. Thereafter, pursuant to FED. R. CIV. P.
6 16(b) the court will enter a scheduling order.

7 8. **Judgment:** Final judgment shall be entered by the Bankruptcy Court unless within sixty
8 days after the initial case management conference the court rules that this is a non-core proceeding and final
9 judgment should be entered by the District Court.

10 9. **Failure of Defendant(s) to Appear:** In the event the defendant(s) has not appeared in the
11 action, the plaintiff should nonetheless go forward with the case management conference unless a default
12 judgment, as distinguished from the clerk's entry of default, has been entered more than ten days prior to
13 the date of the case management conference. If a default judgment has not been entered and no
14 appearance is made, the court will either close the case or issue an order to show cause why the adversary
15 proceeding should not be dismissed for lack of prosecution. The order to show cause generally will be
16 heard within sixty days of the scheduled case management conference.

17 10. **Contact with the Court:** The case management conference will proceed unless it has been
18 continued by order of the court or the adversary proceeding has been disposed of by final order (for
19 example, by a judgment or order of dismissal). If counsel has filed timely a request for a continuance, a
20 default judgment, or a stipulation for a judgment or a dismissal, but has not yet received the order back
21 from the court, counsel should not contact the judge's chambers less than 7 days prior to the case
22 management conference but should presume that the case management conference will proceed if counsel
23 has been contacted by Gentner Court Conference to confirm participation in the conference call.

24 11. **Bankruptcy Dispute Resolution Program (BDRP):** The Bankruptcy Dispute
25 Resolution Program (BDRP) offers a means to resolve disputes quickly, at less cost and often without the
26 stress and pressure of litigation. Methods include mediation, negotiation, early neutral evaluation and
27 settlement facilitation. Parties wishing assignment to the BDRP or to a judicially supervised Settlement
28

1 Conference should contact Millie McGowan at (408) 535-5004. The BDRP procedures are explained in
2 Bankruptcy Local Rule 9040-1 *et seq.* These procedures and a list of available resolution advocates and
3 their resumes are available in the Clerk's Office.

4 12. **Service of Order:** The plaintiff shall serve this telephonic case management conference
5 order on all parties and file proof of service with the court. Plaintiff shall also promptly serve a copy of the
6 Bankruptcy Dispute Resolution Program Information Sheet on all parties. A copy of the Bankruptcy
7 Dispute Resolution Information Sheet is available on the court's website at www.canb.uscourts.gov and at
8 the Clerk's Office.

9 13. **Sanctions:** The failure of a party to comply timely with the provisions of this order may
10 result in the imposition of sanctions pursuant to Bankruptcy Rule 7016.

11
12 DATED: _____

UNITED STATES BANKRUPTCY JUDGE

Adversary No. [Adversary No]

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CERTIFICATE OF SERVICE

I, the undersigned, a regularly appointed and qualified Clerk in the office of the Bankruptcy Judges of the United States Bankruptcy Court for the Northern District of California, San Jose, California hereby certify:

That I am familiar with the method by which items to be dispatched in official mail from the Clerk's Office of the United States Bankruptcy Court in San Jose, California processed on a daily basis: all such items are placed in a designated bin in the Clerk's office in a sealed envelope bearing the address of the addressee, from which they are collected at least daily, franked, and deposited in the United States Mail, postage pre-paid, by the staff of the Clerk's Office of the Court;

That, in the performance of my duties, on the date set forth below, I served the **ORDER SETTING TELEPHONIC CASE MANAGEMENT CONFERENCE** in the above case on each party listed below by depositing a copy of that document in a sealed envelope, addressed as set forth, in the designated collection bin for franking, and mailing:

In addition, I am familiar with the Court's agreed procedure for service on the United States Trustee, by which a copy of any document to be served on that agency is left in a designated bin in the Office of the Clerk, which bin is collected on a daily basis by the United States Trustee's representative. In addition to placing the above envelopes in the distribution bin for mailing, I placed a copy of the **ORDER SETTING TELEPHONIC CASE MANAGEMENT CONFERENCE** in the United States Trustee's collection bin on the below date.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: May 29, 2002

Clerk

INSTRUCTIONS FOR TELEPHONIC CASE MANAGEMENT CONFERENCES

1. Telephone Procedures To Be Followed

Telephonic appearances for case management conferences will be arranged through Court Conference. Court Conference is an independent conference call company that arranges conference calls on a national and international basis for business.

Participants will be contacted at the telephone number set forth at the top of the pleading with the participant's identification. All participants shown on the court's calendar 7 days prior to the case management conference will be contacted by Court Conference at least two days prior to the case management conference to confirm participation in the conference call and payment arrangements.

Attorneys who are unavailable when called by Court Conference **MUST** return the call within 24 hours. The decision whether or not to appear by telephone **MUST** be made at this time and, if non-responsive, you will not be added to the call at the last minute. Do not argue with Court Conference or request special treatment. Court Conference's function is no more than to offer you the opportunity to appear by telephone. Your election to appear by telephone constitutes your agreement for telephonic appearances.

The cost of appearing telephonically is \$40.00. Court Conference will arrange payment by the participant either through the use of a major credit card or, in the case of attorneys, may offer to bill for its service. If Court Conference agrees to bill its services, all bills **MUST** be timely paid.

If you have not been contacted by the second day prior to the case management conference, participants may contact Court Conference at 1-866-582-6878 to discuss procedures, confirm dates and times, etc. Participants must reference this Court, and the case name and number when calling Court Conference.

At the time of the scheduled telephonic case management conference, Court Conference will contact the participant as prearranged. Court Conference may initiate calls to some participants on a delayed basis to minimize waiting time. **All participants MUST be available when called.** If the participant is not available when called, you will be billed for the call and the case management conference will proceed in the participant's absence. The court may impose sanctions as set forth below.

At the time of the case management conference you will initially be in the listening mode and able to hear the case before yours just as if you were in the courtroom. After your call is connected to the courtroom, the Courtroom Deputy will call the case. The Judge will ask for appearances and direct the manner in which the case management conference proceeds. Each time a participant speaks, he or she must identify himself or herself for the record. When the Judge informs the participants that the hearing is completed, the participants may disconnect and the next case will be called.

Telephonic appearances are connected directly with the courtroom's public address system and electronic recording equipment so that a normal record is produced. To ensure a quality record, the use of car phones, public telephone booths, or phones in other public places is prohibited except in the most extreme emergencies. Participants should be able to hear all parties without difficulty or echo. The system also allows more than one speaker to be heard so that the Judge can interrupt a speaker to ask a question or redirect the discussion.

2. Sanctions

Telephonic appearances by multiple participants are only possible where there is compliance with every procedural requirement. Sanctions may be imposed when there is any deviation. Sanctions may include dropping the matter from the calendar, continuing the hearing, proceeding in the absence of an unavailable participant, or a monetary sanction of **\$100** or more. Where Court Conference agrees to bill for its services and the billings are not timely paid attorneys should expect a sanction of **\$250** to be imposed.